

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Concise Statement  
File Number: NSD1137/2021  
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v  
FERRATUM AUSTRALIA PTY LIMITED ACN 151 137 049  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 1/11/2021 1:47:23 PM AEDT

Registrar

### Important Information

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## Concise Statement

No.            of

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### Australian Securities & Investments Commission

Applicant

### Ferratum Australia Pty Limited A.C.N. 151 137 049

Respondent

#### A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

1. The respondent (**Ferratum**) is the holder of Australian Credit Licence 409512 granted to it by the applicant (**ASIC**) on 8 November 2011. That licence authorises Ferratum, *inter alia*, to engage in “credit activities” within the meaning of section 6 of the *National Consumer Credit Protection Act 2009* (Cth) (**Act**). Ferratum has at all relevant times been a “credit provider” within the meaning of section 204 of the *National Credit Code* (**Code**), being Schedule 1 to the Act.
2. Ferratum was incorporated in Australia on 26 May 2011. Ferratum’s ultimate holding company is Multitude SE, a European public limited liability company headquartered in Finland, which was formerly named Ferratum OYJ. Multitude SE and its subsidiaries provide mobile and digital financial services for consumers and small businesses in approximately 25 countries, primarily in Europe.
3. In Australia, Ferratum provides “small amount credit contracts” (**SACCs**) within the meaning of section 5 of the Act to consumers by the operation of a website at “www.ferratum.com.au”. During the period 13 March 2019 to 11 August 2021, Ferratum offered loans ranging from \$500 to \$1,900 for periods of up to 12 months with a “fast” online application and approval process.

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Filed on behalf of (name & role of party)      Australian Securities and Investments Commission, Applicant

Prepared by (name of person/lawyer)      Georgina Thomas, Lawyer, ASIC

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### **Early Payout of SACCs**

4. Pursuant to section 82(1) of the Code, a consumer is entitled to pay out their SACC “at any time” (**Early Payout**) and the amount the credit provider may charge the consumer to do so is prescribed by section 82(2) of the Code.
5. Relevantly, section 82(2) of the Code provides that:

“(2) The amount required to pay out a credit contract (other than a continuing credit contract) is the total of the following amounts:

  - (a) the amount of credit;
  - (b) the interest charges and all other fees and charges payable by the debtor to the credit provider up to the date of termination;
  - (c) reasonable enforcement expenses;
  - (d) early termination charges, if provided for in the contract;

less any payments made under the contract and any rebate of premium under section 148.”
6. During the period 13 March 2019 to 14 July 2020 (**First Relevant Period**), Ferratum charged some consumers who had exercised their right of Early Payout an amount which exceeded that permissible under section 82(2) of the Code. ASIC has identified that at least forty (40) consumers, from a sample of 147 consumers who elected to repay their SACCs early during the First Relevant Period, were affected by this practice and they are listed at Annexure A.
7. A contravention of section 82(2) of the Code is also a contravention of section 24(1A)(b) of the Code because by the overcharging of the Early Payout amount, Ferratum required payment of an amount in respect of a monetary liability that could not be imposed consistently with the Code.

### **SACCs containing fees not permitted under section 31A(1) of the Code**

8. Section 31A(1) of the Code prescribed the fees that Ferratum was permitted to charge consumers under each SACC as follows:

“(1) A small amount credit contract must not impose or provide for fees and charges if the fees and charges are not of the following kind:

  - (a) a permitted establishment fee;
  - (b) a fee or charge (a **permitted monthly fee**) that is payable on a monthly basis starting on the day the contract is entered into;
  - (c) a fee or charge that is payable in the event of a default in payment under the contract;
  - (d) a government fee, charge or duty payable in relation to the contract.”

9. During the period 13 March 2019 to 30 September 2019 (**Second Relevant Period**), Ferratum used standard form contracts for 10,860 consumers which included the following fees or charges:
- (a) a “DDR Alteration Fee” which stated it was payable “on a change being made to the DDR arrangement with you, at your request, at any time under the agreement” (with DDR being a reference to a direct debit request from a consumer’s bank account);
  - (b) a “Direct Deposit Fee” which stated it was payable “on making manual payment of account balance directly into Ferratum owned bank accounts”;
  - (c) a “Returned Mail Fee” which stated it was payable when “postal mail is undeliverable to the address provided on your application”;
  - (d) an “Additional Contract request service levy” which stated it was payable “upon request by you to be provided with your loan contract where this has already been provided to you by us within the last 12 months”;
  - (e) a “Visa or MasterCard payment fee” which stated it was payable “on request by you to make payment of your account by a card service provider, either Visa or MasterCard”; and
  - (f) a “Returned Payment Fee” which stated it was payable when “funded loans being returned and repaid to client due to provision of incorrect bank information”.
10. During the period 1 October 2019 to 11 August 2021 (**Third Relevant Period**), Ferratum used standard form contracts for 33,815 consumers which included a fee or charge being a “DDR Alteration Fee” which now purported to be payable “when, after you are in default in payment under the agreement you request a change to the DDR arrangement with you”. That fee was not payable “in the event of a default” but at *any time* after any default, including after the default had been remedied and the request was being made for reasons unrelated to the default.
11. None of the fees or charges set out in paragraphs 9 and 10 above were permitted to be charged by Ferratum under section 31A(1) of the Code. By entering into SACCs which purported to permit the imposition of these fees or charges, Ferratum contravened section 23A(1)(b) of the Code and therefore it also contravened section 24(1A)(a) of the Code.

***Charging of fees not permitted under section 31A(1) of the Code***

12. During the Second Relevant Period, Ferratum charged:
- (a) the DDR Alteration Fee on 105 occasions (a total of \$2,625);
  - (b) the Returned Mail Fee on 461 occasions (a total of \$6,915); and

- (c) the Visa or MasterCard payment fee on 30 occasions (a total of \$180).
- 13. During the Third Relevant Period, Ferratum charged the DDR Alteration Fee on 204 occasions, totalling \$5,161.
- 14. By requiring payment of the fees set out in paragraphs 12 and 13 above, none of which were permitted to be charged by Ferratum under section 31A(1) of the Code, Ferratum contravened section 24(1A)(b) of the Code.

***Failure to comply with section 47(1)(a), (d) and (f) of the Act***

- 15. Under section 47(1)(a), (d) and (f) of the Act, Ferratum was required to:
  - (a) do all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly;
  - (b) comply with the Act and the Code; and
  - (c) maintain the competence to engage in the credit activities authorised by the licence.
- 16. During the First Relevant Period, in the sample of 147 consumers referred to in paragraph 6 above, ASIC has identified that 59 consumers were undercharged the Early Payout amount and 48 were charged the correct Early Payout amount. In other words, only 33% of Early Payout amounts in the sample reviewed by ASIC were correctly calculated by Ferratum.
- 17. Despite the issue of the proper calculation of the Early Payout amounts being drawn to Ferratum's attention in late 2016, Ferratum:
  - (a) did not build a system that automatically calculated fees and removed the need for manual adjustment and any chance for human error as it stated in its letter to ASIC dated 19 January 2017;
  - (b) during the First Relevant Period:
    - (i) purported to use an Excel spreadsheet which required manual input of the relevant data;
    - (ii) kept no records of its calculation of the Early Payout amounts charged to consumers;
  - (c) in the letter from its solicitors dated 1 July 2020, incorrectly asserted that its "practice of overcharging Borrowers was rectified in 2018"; and
  - (d) in the letters from its solicitors dated 3 and 5 March 2021 and 8 October 2021, could not explain to ASIC how it had miscalculated the Early Payout amounts charged to two named consumers identified by ASIC.

18. In the premises of paragraphs 16 and 17 above, Ferratum failed to implement any system to ensure, record or monitor the proper calculation of the Early Payout amounts owing by consumers to it during the First Relevant Period and thereby contravened sections 47(1)(a) and/or (f) of the Act.
19. Further, by reason of the contraventions identified in paragraphs 7, 11 and 14 above Ferratum thereby also contravened sections 47(1)(a) and/or (d) of the Act.

**B. RELIEF SOUGHT**

20. ASIC seeks each of the declarations in paragraph 3 of the Originating Application with respect to all the contraventions of the Code and Act identified above as well an order for the payment of pecuniary penalties in respect of Ferratum's contraventions of sections 24(1A)(a) and 24(1A)(b) of the Code and sections 47(1)(a) and/or (f) of the Act.
21. In addition, ASIC seeks its costs and such further or other order as the Court deems fit.

**C. LEGAL BASIS FOR RELIEF**

22. The legal basis for the relief is the contraventions identified above.

**D. HARM TO CONSUMERS**

23. There was a direct financial impact on those consumers who were overcharged the Early Payout amounts and were charged the unlawful credit fees and charges. Not all those consumers have necessarily been identified by ASIC. There was an indirect financial impact on consumers who were exposed to the potential of a misleading demand or automatic deduction by Ferratum to pay the unlawful fees and charges under SACCs to Ferratum.

### **Certificate of lawyer**

I Georgina Thomas certify to the Court that, in relation to the concise statement filed on behalf of the applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the concise statement.

1 November 2021

A handwritten signature in blue ink, appearing to read 'G. Thomas', is positioned above a horizontal dotted line.

Signed by Georgina Thomas

Lawyer for the applicant

**Annexure A**  
**(referred to in paragraph 6 of the Concise Statement)**

	<b>Contract identificati on number</b>	<b>Date credit contract entered into</b>	<b>Amount borrowed</b>	<b>Date contract paid out</b>	<b>Overcharge (based on spreadsheet data)<sup>1</sup></b>	<b>Overcharge (based on Statements)<sup>2</sup></b>
1.	1315986	22/03/2019	\$1,000.00	18/04/2019	\$5.30	\$5.30
2.	1325496	08/04/2019	\$1,300.00	16/07/2019	\$28.66	\$28.66
3.	1325665	09/04/2019	\$1,300.00	22/08/2019	\$23.09	\$23.09
4.	1329396	17/04/2019	\$600.00	13/09/2019	\$18.26	\$18.26
5.	1329718	17/04/2019	\$1,300.00	15/07/2019	\$44.37	\$44.37
6.	1330162	18/04/2019	\$800.00	05/09/2019	\$32.00	\$32.00
7.	1333391	26/04/2019	\$1,200.00	30/07/2019	\$61.00	\$96.00
8.	1333483	26/04/2019	\$1,300.00	25/07/2019	\$76.50	\$126.50
9.	1335346	30/04/2019	\$1,300.00	22/08/2019	\$93.00	\$93.00
10.	1336160	02/05/2019	\$1,200.00	03/09/2019	\$417.82	\$48.00
11.	1336963	03/05/2019	\$1,300.00	14/08/2019	\$37.39	\$37.39
12.	1339612	09/05/2019	\$1,200.00	07/10/2019	\$37.92	\$37.92
13.	1345277	20/05/2019	\$1,200.00	17/09/2019	\$343.94	\$96.00
14.	1346245	22/05/2019	\$800.00	02/09/2019	\$228.13	\$64.00
15.	1346220	23/05/2019	\$1,300.00	30/07/2019	\$45.41	\$45.41
16.	1347169	24/05/2019	\$1,300.00	09/08/2019	\$71.46	\$71.46
17.	1349205	29/05/2019	\$600.00	18/07/2019	\$41.00	\$96.00
18.	1355475	12/06/2019	\$1,000.00	09/10/2019	\$71.55	\$36.55
19.	1361376	25/06/2019	\$1,300.00	08/11/2019	\$34.77	\$34.77
20.	1367298	05/07/2019	\$1,300.00	24/10/2019	\$104.00	\$104.00
21.	1364827	11/07/2019	\$1,200.00	12/08/2019	\$76.06	\$76.06
22.	1370342	12/07/2019	\$800.00	26/09/2019	\$22.70	\$86.70
23.	1372930	18/07/2019	\$1,300.00	24/10/2019	\$32.84	\$32.84
24.	1373679	20/07/2019	\$1,000.00	08/10/2019	\$52.16	\$2.16

<sup>1</sup> Overcharged amount calculated based on data provided by Ferratum to ASIC in spreadsheets on 5 December 2019 and 17 July 2020.

<sup>2</sup> Overcharged amount calculated based on data in documents titled 'Statement' provided by Ferratum to ASIC in relation to each contract.



	<b>Contract identificati on number</b>	<b>Date credit contract entered into</b>	<b>Amount borrowed</b>	<b>Date contract paid out</b>	<b>Overcharge (based on spreadsheet data)</b>	<b>Overcharge (based on Statements)</b>
25.	1376206	27/07/2019	\$1,500.00	02/12/2019	\$15.00	\$15.00
26.	1376843	29/07/2019	\$600.00	19/09/2019	\$54.97	\$54.97
27.	1380422	06/08/2019	\$500.00	02/12/2019	\$16.26	\$16.26
28.	1383612	12/08/2019	\$1,900.00	01/11/2019	\$658.00	\$608.00
29.	1383541	12/08/2019	\$1,200.00	20/09/2019	\$149.08	\$149.08
30.	1385707	15/08/2019	\$600.00	21/10/2019	\$53.94	\$72.00
31.	1397906	08/09/2019	\$500.00	30/10/2019	\$13.32	\$20.00
32.	1433686	11/11/2019	\$1,500.00	13/05/2020	\$225.00	\$225.00
33.	1443500	25/11/2019	\$1,900.00	28/01/2020	\$34.87	\$34.87
34.	1449191	29/11/2019	\$1,300.00	24/04/2020	\$52.00	\$52.00
35.	1464737	19/12/2019	\$1,300.00	12/05/2020	\$17.00	\$17.00
36.	1467872	23/12/2019	\$1,900.00	07/05/2020	n/a	\$456.00
37.	1470653	30/12/2019	\$1,200.00	22/05/2020	\$48.00	\$48.00
38.	1528256	18/03/2020	\$500.00	08/05/2020	\$44.37	\$44.37
39.	1528736	19/03/2020	\$1,900.00	02/07/2020	\$46.00	\$46.00
40.	1556489	02/06/2020	\$500.00	10/07/2020	\$40.00	\$26.63